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# Undisclosed Principal - Risks or Advantages

The scenarios where the agents such as ship managers act without disclosing the principal (legal ship owners or the operators) are very common in maritime business. There are cases of fixing the vessels, or conducting other business. Agents carry out lots of business on behalf of undisclosed principals. In such cases, the third parties have no idea that there was an undisclosed principal and that they are contacting with the agents. This is very different scenario where the issue is only in relation to the unnamed principal. Undisclosed principal has the right to intervene and right to sue the third party. Once the third party has discovered that there is the principal, then they can sue either the principal or the agent. Once the third party has made the decision unequivocally, he cannot change the mind and sue the other.

In one recent *London arbitration* (2017) 976 LMLN 2, there was a dispute whether the notice of arbitration sent by the agent 'on behalf of the Owners' was a valid notice or not. Fortunately for the Owners (who were undisclosed principal) came out in open 3 years previously at the time of redelivery of the vessel as a result of the supplementary contract with the operators even though that contract was also executed between the agent and the charterer. If the undisclosed principal (ship owner) would not have come out in open, then there was a possibility of time bar and other complications and likelihood of their losing this arbitration was very high.

Andrew Liu's FDD office based in Shanghai advice to the clients is as follows:

(a) It is better to give clear instructions to the agent to avoid complications. Imagine the complication where in similar case the agent would have exceeded their express or implied authority!
(b) If the client wishes to remain undisclosed, then there are commercial advantages, but at the same time there are also legal risks. Accordingly, the ship owners should be well-prepared to mitigate such risks.
(c) FDD office at Shanghai has regularly assisted the clients to point out contractual risks in such arrangements after doing legal and factual research.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk